

Current Procedures for LPS Testimony in Los Angeles County Superior Court 95

WRIT OF HABEAS CORPUS

- I. Individuals on 14-day holds, additional 14 day holds, 30-day holds, and temporary conservatorships may file petitions for Writs. The Court calendars the hearing within two judicial days of the filing.
 - A. The Designated facility:
 1. Must inform the treating psychiatrist/psychologist or appropriate designee within ½ working day when a patient files a petition
 2. May request, on behalf of the treating psychiatrist/psychologist or appropriate designee, that the Court moves the hearing forward by one day.
 - a) This request must be made on the day the petition is filed by informing the Hearing Officer or by calling (323) 226-2911
 - b) A hearing can never be extended beyond two judicial days after the filing without a court order.
- II. The patient (petitioner) and the treating psychiatrist/psychologist or appropriate designee (respondent) are required to be present at the Writ hearing:
 - A. The Designated Facility:
 1. Must ensure that the patient and the patient's medical record arrive at the court no later than 8:15 a.m. on the date of the hearing, unless the facility requests (by calling the Mental Health Counselor's office 323-226-2911) and receives specific instructions for an alternative time from an officer of the Court. This gives the Public Defender, who represents the patient, time to interview the patient and review the medical record.
 2. Must produce testimonial evidence in support of the hold, e.g. the treating psychiatrist/psychologist or appropriate designee.
 - B. The Treating Psychiatrist/Psychologist or Appropriate Designee:
 1. Must arrive at the court no later than 8:30 a.m. on the date of the hearing, unless the facility requests (by calling the District Attorney's office 323-226-2936) and receives specific instructions for an alternative time from an officer of the Court. This gives the District Attorney time to interview the treating psychiatrist/psychologist or appropriate designee and prepare the case.
 2. Must register at the sign-in desk located in the hall between the entrance and the large waiting room.
 3. After signing in, must go to the District Attorney's Office, located on the first floor off of the main waiting area at the door adjacent to the pay phones, to prepare the case.

4. Must identify him/herself to the receptionist in the Office of the District Attorney and wait to meet with an available Deputy District Attorney.

III. The Hearing

The hearing is held at: The Superior Court
 Mental Health Departments
 1150 North San Fernando Road
 Los Angeles, California 90065

The hearing is held in Department 95B only when all parties are ready to proceed.

- The hearing is called a de novo hearing i.e. the judicial officer may hear testimony on all criteria listed on the certification, not just the ones where probable cause was found.
- All parties are sworn to tell the truth.
- The finding of proof is by a “preponderance of the evidence.”
- The hearing is transcribed by an official court reporter.
- The treating psychiatrist/psychologist or appropriate designee and then the patient and other witnesses will each be questioned by both the Public Defender and the District Attorney.
- The hearing may last up to 1-½ hours, depending on the issues.
- Both parties must be present for the entire hearing, unless excused by the Court.
- A decision is made by the judicial officer at the end of the hearing, i.e. the patient is either held for the remainder of the hold period or released from the hold.
- In either case the patient must return to the facility either to remain for the duration of the hold or to go through proper discharge procedures.

IV. The treating psychiatrist/psychologist or appropriate designee and patient are not required to appear for the hearing if:

- The patient has been discharged
- The patient has consented to voluntary hospitalization with concurrence of the Public Defender
- The patient has withdrawn the petition and their legal counsel has accepted the withdrawal
- The Patient refuses to attend the hearing

A. In such cases the following telephone notifications must be made by the designated facility in the manner noted below no later than 9:00 a.m. on the date of the hearing.

1. If the patient has been discharged, the designated facility must call all of the following in this order:

- a) Public Defender's Office (323) 226-2932
 - b) District Attorney's Office (323) 226-2936 (A message may be left)
 - c) Department 95B (323) 226 8426 (A message may be left)

- 2. If the patient has consented to voluntary hospitalization, refuses to attend the hearing, or has withdrawn the petition, the designated facility must call:
 - a) Public Defender's Office: (323) 226-2932
(The patient must be available to talk to the Public Defender at the time that the call is made. Telephone messages are not accepted.)

- 3. After the patient has spoken with the Public Defender and the Public Defender has signified to the hospital that the hearing may be cancelled, the facility must contact:
 - a) District Attorney's Office (323) 226-2936 (A message may be left)
 - b) Department 95B (323) 226-8426 (A message may be left)

Note: Problems encountered in making contact with any of the above parties should be reported to the Office of the Counselor in Mental Health at (323) 226-2911.

- Failure by the treating psychiatrist/psychologist or appropriate designee to be present for the hearing without proper notification may result in an order to show cause in re contempt of court and imposition of sanctions.

CONSERVATORSHIPS:

- I. The initial application for LPS Conservatorship is generally:
 - A. Initiated by designated attending staff of LPS designated facilities and agencies,
 - B. Signed by the treating physician, and “the professional person in charge” of the designated facility or his/her designee,
 - C. Mailed or faxed by the facility to the Office of the Public Guardian (Petitioner), and
 - D. Sent by the Public Guardian to the Office of County Counsel (Attorney for the Petitioner).(Note: The LPS Act allows initiation of conservatorship in an outpatient setting.)

- II. The Office of County Counsel
 - A. Petitions for a hearing.
 - B. May request that the Public Guardian be appointed temporary conservator if the patient is on a hold. If the Temporary Conservatorship (T-Con) is granted, the hold is extended up to 30 days. With Court approval the T-Con can be extended up to six months.
 - C. Sets a hearing date between fifteen and thirty days after the date of the referral.
 - D. Issues the following “packet” of documents, and sends them with the applications for conservatorship and temporary conservatorship submitted by the attending physician of the proposed conservatee to the Office of the Clerk of the Court for the Judge’s signatures.
 1. Notice of Hearing for Conservatorship
 2. Citation to the Patient to Appear in Court for Hearing
 3. Order Appointing the Public Guardian as Temporary Conservator
 4. Temporary Letters of Conservatorship(Note: Applications for conservatorship shall be typewritten and legible.).

- III. The Judge

The Judge determines whether to accept or reject the application for T-Con.

 - A. If the application is rejected by the Judge:
 1. The Office of the Clerk of the Court notifies the Office of the County Counsel.
 2. The County Counsel notifies the Public Guardian.
 3. The Public Guardian notifies the designated facility/referring party of the proposed conservatee.

 - B. If the application is accepted by the judge:

The judge may or may not grant temporary conservatorship.

1. The Office of the Clerk of the Court:
 - a) Assigns a case number, develops a case folder, and enters the case into the Court's automated case management system.
 - b) Sends the signed Notice of Hearing for Conservatorship, the Citation to the Patient to Appear in Court for Hearing, and the Temporary Letters of Conservatorship back to the Office of the County Counsel.
2. The Office of the County Counsel
 - a) Mails the Notice of the Hearing to the State Department of Health
 - b) Mails a Notice of Hearing and Proof of Service to the people (usually 1st degree relatives) listed on the treating psychiatrist/psychologist or appropriate designee's Application for Mental Health Conservatorship.
 - c) Sends the Citation to the Patient to Appear in Court.
 - d) Sends the Petition to the Public Guardian and to the facility holding the patient.
 - e) Sends the Temporary Letters, if applicable, to the Public Guardian.
 - f) Hand delivers all paperwork to the Public Defender (attorney for the proposed conservatee) when the signed Letters of Temporary Conservatorship come back with the assigned court case number. The Public Defender will counsel the patient on the date of the hearing to determine whether to contest the establishment of the conservatorship.

III. T-Cons

Once the Public Guardian is appointed temporary conservator, the Office of the Public Guardian mails a Notice to Detain and Treat to the designated facility that initiated the conservatorship.

Note that the patients with T-Cons can be moved by the temporary conservator.

V. During the Investigation for Conservatorship:

- A. The Public Guardian may speak with the treating psychiatrist or psychologist usually by telephone to obtain information regarding the patient that will be used to determine the recommendation of the Public Guardian (the Petitioner) to the County Counsel (the attorney for the Petitioner) regarding conservatorship. The doctor should contact the Public Guardian to assure the Public Guardian has relevant and accurate information.
- B. When the Public Guardian recommends against conservatorship, the court generally accepts the recommendation, unless the treating psychiatrist or psychologist or appropriate designee or a family member requests to be heard on the issue of grave disability, in which

case the hearing will proceed as scheduled. The doctor should seek out County Counsel before the hearing if (s) he is aware that there is a “no” recommendation.

- C. Notification of the Treating Psychiatrist/Psychologist or Appropriate Designee Regarding the Hearing Date:
1. Initial Conservatorship: the facility where the proposed conservatee is being treated must notify the treating psychiatrist/psychologist or appropriate designee.
 2. Reappointment: A Conservatorship Re-Evaluation - Physician Declaration form is sent approximately six weeks prior to the hearing date to the facility where the conservatee resides. The treating psychiatrist/psychologist or appropriate designee must complete and sign this form with information documenting that the conservatee remains gravely disabled. The doctor may still be required to come to court if the reappointment is contested. The hearing date for reappointment is at the top of this form.

VI. The Hearing

- A. In the event of a contested hearing, the treating psychiatrist/psychologist or appropriate designee of the proposed conservatee is expected (by precedent and notice or subpoena) to appear at the hearing to give testimony regarding the patient’s alleged grave disability (inability to provide for food, clothing and/or shelter) due to a mental disorder.
- B. The treating psychiatrist/psychologist or appropriate designee may wish to call County Counsel (323) 226-2927 between 2:00 p.m. and 5:00 p.m. on the day prior to the hearing:
1. to ask any questions concerning the hearing,
 2. to request changes of the court date,
 3. to provide additional information or consult regarding the content/expected focus of the testimony, or
 4. to determine if the hearing will be contested.
- C. The doctor will be called as soon as it is learned that his/her appearance will not be required.

- D. Conservatorship Petitions are heard at:

The Superior Court
Mental Health Departments
1150 North San Fernando Road
Los Angeles, California 90065

In

- • Department 95A for adults, and in
- • Department 95B for minors.

VII. Transportation to Court

The Public Guardian via the designated facility may arrange transportation of the proposed conservatee to the court.

VIII. Arrival Time:

- A. The treating psychiatrist/psychologist or appropriate designee (percipient witness) for the proposed conservatee and other interested parties are required to arrive at Department 95 no later than 8:30 A.M. The requirement to arrive prior to court being in session is to give County Counsel an opportunity to discuss issues regarding the case with the witnesses prior to the hearing.
- B. The proposed conservatee must arrive no later than 8:15 A.M. This gives the patient time to meet with the Public Defender prior to the hearing.
- C. Sign-in: All Parties must register at the sign-in desk located in the hall between the entrance and the large waiting room and wait in the lobby until the Court opens.

IX. The Courtroom:

The bailiff announces when everyone having business with the court can enter the courtroom.

- A. The treating psychiatrist/psychologist or appropriate designee for the proposed conservatee must check-in with the Bailiff who has a sign in sheet.
- B. By court order no one is to approach the counsel table (where the attorneys sit to present their case to the court) while court is in session.
- C. (If the treating psychiatrist/psychologist or appropriate designee arrives after court is in session, (s) he must make let the bailiff know (s) he has arrived.)
(Note: The court does not permit persons in the courtroom to read newspapers, books, etc...)

X. The Calendar is called:

- A. First Call (9:30 a.m. – 10:45 a.m.): The court calls the calendar, goes through the list of cases (alphabetically, by proposed conservatee's last name), scheduled for that day. Those matters that can be handled summarily are handled at that time. All other matters are put over to "second call," meaning that they will be called when ready after the entire calendar has been "called" once. If there is a time problem, check with the clerk, and the court will attempt to give priority to a "good faith" request.
- B. Second Call (10:45 a.m. – end of court session: Matters that require testimony are always put on "second call." Matters for which the lawyers are not yet ready at "first call" are also put on "second call." Thus it is impossible to say with any certainty, which matters will actually go to testimony until the lawyers are ready to proceed.
- C. If the Public Defender decides to contest the proposed conservatorship, the treating psychiatrist/psychologist or appropriate designee must remain in court until the hearing commences (often longer than 2 hours).

- Failure by the treating psychiatrist/psychologist or appropriate designee to be present for the hearing without proper notification may result in an order to show cause in re contempt of court and imposition of sanctions.